

**Senate File 2347 - Introduced**

SENATE FILE 2347  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SF 2089)

**A BILL FOR**

1 An Act prohibiting the advertising and conducting of certain  
2 live music performances or productions under specified  
3 circumstances, and making penalties applicable.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 714.16D Live musical performances  
2 — misrepresentations.

3 1. A person shall not advertise or conduct a live  
4 musical performance or production through the intentional  
5 use or representation of a false, deceptive, or misleading  
6 affiliation, connection, or association between a performing  
7 group and a recording group. Such intentional use or  
8 representation of an affiliation, connection, or association  
9 shall not be considered a violation of this section if one or  
10 more of the following applies:

11 a. The performing group is the authorized registrant and  
12 owner of a federal service mark for that group registered in  
13 the United States patent and trademark office.

14 b. At least one member of the performing group was a member  
15 of the recording group and has a legal right by virtue of use  
16 or operation under the recording group name without having  
17 abandoned the name or affiliation with the recording group.

18 c. The live musical performance or production is identified  
19 in all advertising and promotion as a salute or tribute.

20 d. The advertising does not relate to a live musical  
21 performance or production taking place in this state.

22 e. The performance or production is expressly authorized by  
23 the recording group.

24 2. For purposes of this section:

25 a. "Advertise" or "advertising" means the same as  
26 advertisement, as defined in section 714.16, subsection 1,  
27 paragraph "a".

28 b. "Deceptive", in an action by the attorney general  
29 pursuant to this section, means the same as deception, as  
30 defined in section 714.16, subsection 1, paragraph "f", and in  
31 a private action pursuant to this section means the same as  
32 deception, as defined in section 714H.2, subsection 5.

33 c. "Performing group" means a vocal or instrumental  
34 group seeking to use the name of a recording group that has  
35 previously released a commercial sound recording under that

1 name.

2 *d.* "Person" means the same as defined in section 714.16,  
3 subsection 1, paragraph "j".

4 *e.* "Recording group" means a vocal or instrumental group at  
5 least one of whose members has previously released a commercial  
6 sound recording under that group's name and in which the member  
7 or members have a legal right by virtue of use or operation  
8 under the group name without having abandoned the name or  
9 affiliation with the group.

10 *f.* "Sound recording" means a work that results from the  
11 fixation on a material object of a series of musical, spoken,  
12 or other sounds regardless of the nature of the material  
13 object, such as a disk, tape, or phonographic record, in which  
14 the sounds are embodied.

15 3. A violation of this section is an unlawful practice  
16 pursuant to section 714.16 and is a prohibited practice  
17 pursuant to chapter 714H.

18 4. The exemptions from liability included in section  
19 714.16, subsection 14, and section 714H.4, subsection 1,  
20 paragraph "c", shall apply to an action pursuant to this  
21 section.

22 5. The owner of the venue at which a performance in  
23 violation of this section occurs is exempt from liability under  
24 this section unless the owner of the venue has an ownership  
25 interest in or is a member of the performing group which  
26 violated this section.

27

EXPLANATION

28 This bill provides that the advertisement or conducting of a  
29 live musical performance or production through the intentional  
30 use or representation of a false, deceptive, or misleading  
31 affiliation, connection, or association between a performing  
32 group and a recording group constitutes an unlawful practice  
33 pursuant to Code section 714.16.

34 The bill defines a "performing group" as a vocal or  
35 instrumental group seeking to use the name of a recording group

1 that has previously released a commercial sound recording, as  
2 defined in the bill, under that name. A "recording group" is  
3 defined as a vocal or instrumental group at least one of whose  
4 members has previously released a commercial sound recording  
5 under that group's name and in which the member or members have  
6 a legal right by virtue of use or operation under the group  
7 name without having abandoned the name or affiliation with the  
8 group.

9 The bill specifies circumstances under which performing  
10 group advertisements, performances, or productions involving  
11 sound recordings by recording groups will not constitute an  
12 unlawful practice. These include when the performing group  
13 is the authorized registrant and owner of a federal service  
14 mark for that group registered in the United States patent and  
15 trademark office, when at least one member of the performing  
16 group was a member of the recording group and has a legal right  
17 by virtue of use or operation under the group name without  
18 having abandoned the name or affiliation with the group, when  
19 the live musical performance or production is identified in  
20 all advertising and promotion as a salute or tribute, when the  
21 advertising does not relate to a live musical performance or  
22 production taking place in Iowa, and when the performance or  
23 production is expressly authorized by the recording group.

24 The bill exempts the owner of a venue at which a prohibited  
25 performance under the bill takes place from liability unless  
26 the owner has an ownership interest in or is a member of the  
27 performing group.

28 The penalty provisions for unlawful practice violations  
29 under Code section 714.16 would be applicable, and include  
30 injunctive relief and a civil penalty of up to \$40,000 per  
31 violation. Additionally, a civil penalty of up to \$5,000 for  
32 each day of an intentional violation of a restraining order  
33 or injunction may be imposed. Further, the bill specifies  
34 that a violation of the bill's provisions constitutes a  
35 prohibited practice pursuant to Code chapter 714H, giving rise

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1 to a private cause of action for damages. The bill makes  
2 specified exemptions and exclusions from liability contained  
3 in Code section 714.16, subsection 14, and Code section 714H.4  
4 applicable to a violation of the bill's provisions.